

TITLE 22. CRIMINAL OFFENSES AND PENALTIES  
SUBTITLE I. CRIMINAL OFFENSES  
CHAPTER 32. THEFT; FRAUD; STOLEN PROPERTY; FORGERY; AND EXTORTION  
SUBCHAPTER IIIB. TELEPHONE FRAUD

D.C. Code § 22-3226.01 (2003)

**§ 22-3226.01. Definitions**

For the purposes of this subchapter, the term:

(1) "Applicant" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, and any other organization required to register with the District to conduct telemarketing in the District of Columbia.

(2) "Certificate of registration" means a document issued by the District government showing that a named individual or business has registered as a telephone solicitor with the Mayor of the District of Columbia.

(3) "Consumer" means a person who is or may be required to pay for goods or services offered by a telephone solicitor through telemarketing.

(4) "Goods" or "services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a consumer.

(5) "Licensed securities, commodities or investment broker" means a licensed or registered securities, commodities or investment broker.

(6) "Seller" means any person, who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(7) "Telemarketing" means a plan, program or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones. Telemarketing does not include a one-time or infrequent transaction unrelated to a pattern of repeated transactions. Telemarketing does not include a telephone call to a consumer:

(A) As a one-time or infrequent transaction unrelated to a pattern of repeated transactions;

(B) To provide information to a consumer and in which payment for the sale of good or services is not accepted in that telephone call;

(C) To administer an existing account or service an existing customer (including product safety recalls);

(D) To respond to a consumer's request; or

(E) In which payment for the sale of good or services is not accepted in that telephone call.

(8) "Telephone solicitor" means a person (acting himself or itself, or through an agent) who initiates a telephone call to a consumer in the District of Columbia as a part of a plan, program, or campaign which is conducted to induce the purchase of goods or services by the use of one or more telephones. A telephone solicitor does not include a person who initiates a telephone call to a consumer:

(A) As a one-time or infrequent transaction unrelated to a pattern of repeated transactions;

(B) To provide information to a consumer and in which payment for the sale of good or services is not accepted in that telephone call;

(C) To administer an existing account or service an existing customer (including product safety recalls);

(D) To respond to a consumer's request; or

(E) Does not accept payment for the sale of good or services in that telephone call.

D.C. Code § 22-3226.02 (2003)

**§ 22-3226.02. Application for a certificate of registration of telephone solicitor**

(a) No person shall transact any business as a telephone solicitor without first having obtained a certificate of registration from the Mayor.

(b) The application for certificate of registration shall be made at least 60 business days prior to offering for sale consumer goods or services by telephone.

(c) The Mayor shall provide an application form for the annual certificate of registration.

(d) The application for a certificate of registration as a telephone solicitor shall include, but not be limited to, the following information:

(1) The true name, current address, telephone number and location of the telephone solicitor and the telemarketing business, including each name and trade name under which the telephone solicitor intends to engage in telephone solicitations;

(2) Each occupation or business that the telemarketing business' principal owner or owners have engaged in for the 2 years immediately preceding the date of the application;

(3) Whether the applicant has been convicted or pled guilty to, or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(4) Whether there has been entered against the applicant an injunction, temporary restraining order or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion or misappropriation of property, including any pending litigation;

(5) Whether the applicant, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt or been reorganized because of insolvency;

(6) The true name, mailing address, and date of birth of the following:

(A) Each seller or other person employed by the applicant;

(B) Each person participating in or responsible for the management of the applicant's business;

(C) Each person principally responsible for the management of the applicant's business; and

(7) The name and true address of a registered agent for service of process in the District of Columbia for the applicant's business.

(e) The Mayor shall serve as the registered agent if no registered agent is appointed or if the individual or organization named ceases to serve as the registered agent and no successor is appointed.

(f) The Mayor shall investigate the veracity of an application.

(g) The Mayor shall deny a certificate of registration when the Mayor determines that an application contains false information.

(h) The Mayor shall provide written notification to an applicant when an application has been denied.

(i) The Mayor shall notify the applicant in writing of the information that the Mayor finds to be false.

(j) No person may conduct telemarketing in the District of Columbia without having first obtained a certificate of registration.

(k) The Mayor shall either deny or grant an application within 30 days of the filing of an application.

(l) The Mayor may establish reasonable fees for filing of applications. The Mayor shall make available printed license application forms as well as electronic forms, which may be downloaded by computer.

(m) Certificates of registration issued in accordance with this subchapter shall be valid for one year. Prior to expiration of a certificate of registration, an applicant may obtain a new certificate by the filing of a new application.

(n) If any person has obtained a certificate of registration under false pretenses, including providing false information in an application, the certificate of registration shall be revoked and may be reinstated only upon proof of correction.

D.C. Code § 22-3226.03 (2003)

**§ 22-3226.03. Surety bond requirements for telephone solicitors**

(a) The application for registration or renewal shall be accompanied by a surety bond in the amount of \$ 50,000. The bond shall provide for the indemnification of any person suffering a loss as the result a violation of this subchapter.

(b) The surety may terminate the bond upon giving a 60-day written notice to the principal and to the Mayor.

(c) Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the principal shall be treated as lapsed.

D.C. Code § 22-3226.04 (2003)

**§ 22-3226.04. Security alternative to surety bonds**

(a) An applicant required under this subchapter to file a bond with a registration application may file with the Mayor, in lieu thereof, a certificate of deposit or government bond in the amount of \$ 50,000.

(b) The Mayor shall hold the certificate of deposit or government bond for 3 years starting from the date the telemarketing business ceases to operate or the registration lapses in order to pay claims made against the telemarketing business during its period of operation after which time the Mayor shall return any remaining balance.

(c) The registration of the telemarketing business shall be treated as lapsed if, at any time, the amount of bond, cash, certificate of deposit or government bonds falls below the amount required by this section.

(d) The surety bond shall remain in effect for 3 years from the period the telemarketing business ceases to operate in the District.

(e) The aggregate liability of the surety company to all persons injured by a telephone solicitor's violations of this subchapter shall not exceed the amount of the bond.

D.C. Code § 22-3226.05 (2003)

**§ 22-3226.05. Exemptions**

(a) A telephone solicitor shall be exempt from the registration and bonding requirements of this subchapter if the telephone solicitor is engaged in any of the following activities:

(1) Telephone solicitation for religious or political purposes, or for a charitable or educational institution, or fundraising for other tax-exempt, nonprofit organizations;

- (2) A home solicitation sale that involves a subsequent face to face meeting between the seller and the consumer;
- (3) Sales by a licensed securities, commodities, investment broker, or investment advisor when soliciting over the telephone within the scope of the person's license;
- (4) A solicitation for the sale of a newspaper of general circulation and other publications that have a predominantly editorial or news-related content;
- (5) A solicitation for a sale regulated by the Commodities Futures Trading Commission;
- (6) A solicitation for the sale of any goods whenever the person allows a 7-day review period and a full refund within 30 days after the return of such goods to the person;
- (7) A solicitation by a financial institution, such as a bank, trust company, a saving and loan association, a credit union, a commercial and consumer finance lender, regulated by the United States government;
- (8) A solicitation by an insurance company or other organization that is licensed or authorized to conduct business in the District of Columbia;
- (9) A solicitation for the sale of cable television services operating under the authority of a governmental franchise or permit;
- (10) Fundraising on behalf of a college or university or any other public or private educational institution;
- (11) A solicitation for sales pursuant to a catalog that includes clear disclosure of sales prices, shipping, handling and other charges;
- (12) A solicitation by a political subdivision or instrumentality of the United States or any state of the United States, or any public utility that is subject to regulation by the District of Columbia Public Service Commission;
- (13) A solicitation by a person who is a licensed travel agent acting within the scope of the agent's license; or
- (14) A solicitation by a person who is a licensed real estate broker within the scope of the broker's license.

D.C. Code § 22-3226.06 (2003)

**§ 22-3226.06. Unlawful acts and practices**

(a) A telephone solicitor commits the offense of telephone solicitation fraud when engaged in any one of the following:

- (1) Fails to obtain or maintain a valid certificate of registration;
- (2) Obtains a certificate of registration through any false or fraudulent pretence or representation in any registration application;
- (3) Knowingly fails to have received written consent to use the name of a charitable organization;
- (4) Knowingly misrepresents any of the following:
  - (A) The total cost of the goods or services that are the subject of the telephone solicitation sales call;
  - (B) Material restrictions, material limitations, or material conditions to the purchase of goods or services that are the subject of a telephone solicitation;
  - (C) Material aspects of the performance, efficacy, nature or characteristics of goods or services that are the subject of a telephone solicitation; or
  - (D) Material aspects of the nature of terms of the telephone solicitor's refund, cancellation, exchange or repurchase policies;
- (5) Induces a consumer to purchase goods or services by means of a false or fraudulent pretense, representation or promise;

(6) Charges a consumer's checking or savings account without the consumer's express written authorization; or

(7) Procures the services of any professional delivery, courier, or other pickup service to obtain immediate receipt and/or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before payment is collected.

(b) A person who violates any provision of this section shall be subject to the penalties provided in §§ 22-3226.09 and 22-3226.10.

D.C. Code § 22-3226.07 (2003)

#### **§ 22-3226.07. Deceptive acts and practices prohibited**

(a) It is a deceptive telemarketing act or practice for any seller or telephone solicitor to misrepresent any of the following material information:

- (1) The total purchase cost to the consumer of the goods or services to be received;
- (2) The true name of the telephone solicitor; or
- (3) Material aspects of the quality or basic characteristics of the goods or services purchased.

(b) It is a deceptive telemarketing act or practice for any seller or telephone solicitor to misrepresent any material fact regarding the goods or services purchased that has a tendency to mislead.

(c) No person shall commit a deceptive telemarketing act or practice.

D.C. Code § 22-3226.08 (2003)

#### **§ 22-3226.08. Abusive telemarketing acts or practices**

It is an abusive telemarketing act or practice and violation of this subchapter for a seller or telephone solicitor to engage in the following conduct:

- (1) Cause a telephone to ring more than 15 times in an intended telephone solicitation call;
- (2) Initiate a telephone solicitation call to a consumer after the same consumer has expressly stated that he or she does not wish to receive solicitation calls from that seller; or
- (3) Engage in telephone solicitation to a consumer's residence at any time before 8:00 a.m. and after 9:00 p.m., local time at the place of the consumer called.

D.C. Code § 22-3226.09 (2003)

#### **§ 22-3226.09. Civil penalties**

(a) The following penalties may be imposed in addition to those otherwise available at law:

(1) Any telephone solicitor who violates any provision of this subchapter may be fined up to \$ 1,000 per violation.

(2) A permit or license shall be revoked or suspended if the seller or telephone solicitor fails to comply with the registration requirements of this subchapter.

(3) A judge may impose treble damages against any telephone solicitor who knowingly targets elderly or disabled persons.

(b) Fines shall be payable to the Fraud Prevention Fund established in § 22-3226.14.

D.C. Code § 22-3226.10 (2003)

#### **§ 22-3226.10. Criminal penalties**

Any telephone solicitor who violates § 22-3226.06 and obtains property thereby shall be guilty of the crime of telemarketing fraud, which is punishable as follows:

(1) If the amount of the transaction is valued at \$ 20,000 or more, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than \$ 10,000 or imprisonment for not more than 4 years, or both.

(2) If the amount of the transaction is valued at less than \$ 20,000 but more than \$ 5,000, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than \$ 5,000 or imprisonment for not more than 3 years, or both.

(3) If the amount of the transaction is valued at less than \$ 5,000 or less, the seller or telephone solicitor shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$ 500 or imprisonment for not more than 6 months, or both.

D.C. Code § 22-3226.11 (2003)

#### **§ 22-3226.11. Private right of action**

(a) Any consumer injured as a result of a violation of § 22-3226.06, § 22-3226.07, or § 22-3226.08 may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

- (1) A declaratory judgment;
- (2) Injunctive relief;
- (3) Reasonable attorney's fees and costs;
- (4) Actual damages;
- (5) Punitive damages; and
- (6) Any other equitable relief which the court deems proper.

(b) Nothing in this subchapter shall prevent any consumer who is injured by any other trade practice from exercising any right or seeking any remedy to which the consumer might be entitled.

D.C. Code § 22-3226.12 (2003)

#### **§ 22-3226.12. Statute of limitations period**

Claims for damages or compensation under this subchapter shall be filed within 3 years of the time the seller or telephone solicitor initiated the solicitation telephone call.

D.C. Code § 22-3226.13 (2003)

**§ 22-3226.13. Task force to combat fraud**

- (a) The Mayor shall form a task force for the following purposes:
  - (1) Collecting information on telephone fraud;
  - (2) Taking steps to educate the public about fraud, including telephone fraud;
  - (3) Sharing information related to telephone fraud with District government agencies;
  - (4) Sharing information related to telephone fraud with other state and federal law enforcement agencies; and
  - (5) Advising the Mayor on enforcement of the provisions of this subchapter.
- (b) The task force may include representatives from the following agencies:
  - (1) Metropolitan Police Department;
  - (2) Department of Consumer and Regulatory Affairs;
  - (3) Office of Corporation Counsel; and
  - (4) Any other agency the Mayor deems appropriate.

D.C. Code § 22-3226.14 (2003)

**§ 22-3226.14. Fraud Prevention Fund**

- (a) There is established a Fraud Prevention Fund ("Fund"). This Fund shall be nonlapsing. Monies in the Fund shall not be commingled with the General Fund, nor shall the operation of the Fund impose a burden or charge on the General Fund.
- (b) Monies in the Fund shall consist of fines paid pursuant to this subchapter.
- (c) Monies from this fund may be used for the purposes of educating the public regarding fraud and crime prevention, supporting the task force to combat fraud, and enforcing this subchapter.
- (d) The District of Columbia Auditor shall perform an annual audit of the Fraud Prevention Fund.

D.C. Code § 22-3226.15 (2003)

**§ 22-3226.15. General disclosures**

- (a) Within the first 30 seconds of a telephone call, the telephone solicitor shall identify himself or herself by stating his or her true name, the company on whose behalf the solicitation is being made, and the goods or services to be sold.
- (b) Any person who violates this section shall be subject to civil penalties pursuant to § 22-3226.09.